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Company: FCC

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Date: October 23, 2002

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To: Michael Powell
Chairman
Federal Communications Commission

CC Dkt No. 01-338

From: Eddie Edwards
President and Chief Executive Officer
OFS

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Re: Pending Broadband Regulations

As the second largest global supplier and a leader in optical fiber, cable and component technology, **OFS** commends and supports the Federal Communications Commission's (FCC) efforts to reform outdated U.S. telecommunications laws. OFS is profoundly affected by **severely** diminished broadband investment and industry uncertainty resulting from these laws.

We know that by January, the FCC expects to act on three **proposals** for broadband regulatory reform centered around the Non-dominance Proceeding, the UNE Triennial Review Proceeding and the **Defining ILEC Internet Access** Proceeding.

We're concerned that the Commission's proposed regulations fail to differentiate between new and existing broadband deployment and between broadband and non-broadband services. Instead, the Commission appears focused **primarily** on the organizational nature of the service provider. We believe that moving forward with the regulations without addressing this distinction will be a policy mistake **that** will lead to further confusion, inequity and instability in the market.

In order to increase deployment of bandwidth to consumers and increase investment in bandwidth, regulations must be designed to minimize costs and difficulties associated with all new broadband deployments regardless of the organizational nature of the service provider. This goal can best be accomplished by deregulating all new broadband deployments.

Specifically regarding the three issues currently pending before the Commission:

1. Non-Dominance Proceeding

We think the proposed rule questioning whether telephone companies should be considered "dominant" in the provision of broadband services is off-target. With digital

technology, all broadband services are, by their nature, information services. Digital voice, video, and data bits are indistinguishable. This reality needs to be reflected in the new regulations.

To date, incumbent carriers' (ILEC) legacy networks have provided only marginal advantage over telecommunications service competitors (CLECs and IXCs) given that ILECs **must** themselves invest in new equipment and open **all** their broadband facilities to competitors. At the same time, Cable Television organizations (**MSOs**), whose deployment of broadband **is** deregulated, have generated true facilities-based competition. ILEC telecom incumbency has not resulted in a broadband advantage while lack of regulation has given MSOs a significant broadband lead. By investing in broadband infrastructure, MSOs have achieved about 75% market share in contrast to the **25%** of the broadband market captured by telecom carriers.

Clearly, ILEC historic telecommunications dominance has not carried over into broadband dominance.

2. To what extent should ILEC competitors have the right to demand and receive unbundled "pieces" of the ILEC's network at special rates under the UNEs TELRIC pricing regulations?

ILEC's historic dominance in telecommunications services and their existing access networks has led to the deployment of dial-up modem and broadband DSL services under UNE regulations. **As** a result, a large and vital CLEC and **ISP** industry has developed which provides significant competition among DSL, voice, and dial-up internet service providers and **the** associated consumer benefits of provider choice. This important industry segment **is** dependent upon using existing unbundled **ILEC network** elements based on TELRIC pricing.

OFS thinks that the current UNEs and **TELRIC** pricing scheme **should** be kept in place and not modified for all non-broadband telecommunication service applications as **well** as **all existing** broadband deployments where UNEs are already being **utilized**. However, since ILECs are clearly not dominant in broadband services and since existing UNE and TELRIC regulations only diminish investment in *new* broadband deployment, **OFS** supports creating a "carve out" from the status quo for all new broadband activity including converged voice, data, and video services. New broadband needs to be fully deregulated for true facilities-based competition to develop rather than just consumer choice among service providers offering similar services on similar equipment (the current telecom competitive situation with CLECs offering TELRIC-based price and provider choice).

As written, the regulations make no distinctions between *new* broadband and existing broadband deployment and between voice and dial-up modem telecommunications services and converged voice, video, and data broadband information services. We strongly recommend deregulation of all *new* broadband deployment, regardless of

services carried, while maintaining the status **quo** on existing broadband and telecommunications services to ensure the survival of CLECs and ISPs.

3. Legal Definition of ILEC broadband services.

We believe that broadband is inherently an "information service" where all digital bits, whether voice, video, or data, are equal. This is distinct from traditionally defined voice-oriented telecommunications service where either analog or digital circuit-switched voice or dial-up data services are provided.

One of the greatest advantages brought by today's DSL and Cable Modem and tomorrow's Fiber-to-the-Home (FTTH) services is their ability to carry converged voice, video, and **high-speed** data services over a single network. While historic ILEC incumbent networks provide clear advantage in the provision of narrowband voice and dial-up modem telecommunications services, they provide no such advantage in the deployment of new converged voice, video and data broadband information services. Thus, though broadband information services will naturally include voice traffic, they are quite distinct from ILEC telecommunications services.

Therefore, OFS believes that any "converged" broadband service (i.e. where you have the capability for voice, video and/or high-speed data sharing the same lines) should be defined as an information service regardless of which converged services are offered.

We believe that unless the proposed regulations are modified to make a clear-cut distinction between new broadband and existing broadband services, both the telecommunications industry and its customers will be ill-served. Without the distinction, regulatory reform will be unable to achieve the goal of promoting new bandwidth deployment and broadband investment, and will significantly harm existing competition by impeding the ability of the CLECs and independent ISPs to remain in business.

Finally, while we believe that modification of the regulations to deregulate all new broadband deployment will go a long way toward improving the condition of the telecommunications industry, the proposed rules cover only a subset of the entire telecommunications policy dilemma. By excluding issues such as reciprocal compensation, interLATA data transport, state regulation of broadband and a number of other significant policy issues, the regulatory playing field still remains somewhat undefined. OFS believes the most effective path to necessary reform is for the Bush Administration to unveil a comprehensive high-speed Broadband policy that balances the needs of all parties and is designed to keep the United States at the fore of developing new broadband technology and applications

We appreciate your attention to our comments and would welcome the opportunity to discuss our concerns with you directly. I can be reached at 770/798-4265.